

No. 87-416

Supreme Court, U.S.

FILED

MAR 11 1988

JOSEPH F. SPANIOL, JR.
CLERK

In The
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

UNITED STATES CATHOLIC CONFERENCE et al.

Petitioners,

v.

ABORTION RIGHTS MOBILIZATION, INC. et al.

Respondents

On Writ of Certiorari
To the United States Court of Appeals
For the Second Circuit

BRIEF AMICUS CURIAE OF
NATIONAL ASSOCIATION OF LAITY
SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Do respondents have standing as voters and clergy members to challenge the government's unconstitutional and unlawful enforcement of a provision of the Internal Revenue Code?

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CONSTITUTIONAL PROVISIONS

U.S. Const., Article III, Section 2:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; -- . . . Controversies to which the United States shall be a Party; . . ."

U.S. Const., Amend. I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;"

INTEREST OF AMICUS CURIAE

The National Association of Laity ("NAL") is to support the constitution and decrees of the Second Vatican Counsel. New Catholic Encyclopedia, Volume XVII (New York 1979), at p. 446. It is concerned with the improper entangling of Catholic institutional governments with the civil structure of the American government. NAL has taken positions on moral issues relating to Catholic theology

and intends to take positions in the future. The positions taken by NAL have in the past and will likely in the future be positions differing from the institutional church as represented by petitioners.

NAL opposes the trend of the hierarchy to use money and other resources of the church to pursue a political agenda. See Lader, "Power, Politics and the Church", Conscience, Volume VII, nos. 5 and 6 (September-December, 1987), at page 38. See also, letter of Senator Patrick J. Leahey, to the editors, Conscience, Vol. VIII, No. 4 (July-August, 1987), at page 12.

NAL does not currently enjoy the benefits of having contributions to it treated as deductible by its contributors, for federal income tax purposes, pursuant to Title 26 U.S.C., Section 501(c)(3). NAL is therefor at

an economic disadvantage in propagating its positions in comparison with petitioners.

INTRODUCTION

NAL supports respondents' position with respect to question 2. It contends that voters and clergy members have standing in challenging the government's unconstitutional and unlawful enforcement of a provision of the Internal Revenue Code, granting tax-exempt status only to organizations which do not participate in political campaigns on behalf of any candidates for public office.

STATEMENT OF THE CASE

This matter comes before the court on a writ of certiorari to the United States Court of Appeals for the Second Circuit to review the decision of that court on an appeal from an adjudication of civil contempt against petitioners, who are non-party witnesses in the United States District Court for the Southern District of New York.

The Court of Appeals affirmed (2-1) the adjudication of contempt by the district court, holding (1) that petitioners could challenge their contempt adjudication only upon the limited ground that the district court lacked even colorable jurisdiction over the underlying lawsuit and (2) that colorable jurisdiction existed with the result that petitioners challenge failed.

The Court of Appeals did not need to

reach, and did not reach, the question as presented.

The district court recognized respondents' claim of direct personal injury from the fact that the federal government's failure to enforce political action limitations of Section 501(c)(3), has placed the petitioners at a competitive disadvantage with the institutional church in the arena of public advocacy on important public issues.

Plaintiffs in the district court included clergy members of religious institutions and denominations that do not share the theological positions of the institutional Catholic Church. Plaintiffs also included voters who assert that the political process is distorted by subsidy of political activity by the Catholic Church, but not others, including themselves.

Defendants were the Secretary of the Treasury and the Commissioner of Internal Revenue.

Petitioners, who were not parties in the district court, are the National Conference of Catholic Bishops ("NCCB"), an assembly of all bishops of all rites of the Catholic Church in the United States, its possessions and territories, and the United States Catholic Conference, the administrative arm of NCCB.

ARGUMENT

1. Respondents have standing as voters and clergy members to challenge the government's unconstitutional and unlawful enforcement of a provision of the Internal Revenue Code.

Standing requires plaintiff to "allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the request for relief." Allen v. Wright, 468 U.S. 737, 751 (1984). In addition, the plaintiff must satisfy the so-called "prudential concerns", reflecting "judicially self-imposed limits in the exercise of federal jurisdiction". Id.

NAL adopts and relies upon the brief of respondents Abortion Rights Mobilization et al., with respect to the analysis of injury to respondent and the likelihood that their request for relief will be redressed.

Prudential concerns favor standing for respondents.

The Establishment Clause arose out of a desire to prohibit a national or state church such as had existed in England, other countries and some of the colonies. The First Amendment "rests upon the premise that both religion and government can best work to achieve their ~~lefty~~ aims if each is left free from the other within its respective sphere." McCullum v. Board of Education, 333 U.S. 203 (1948).

The object of insuring governmental neutrality toward religious viewpoints cannot be left exclusively to the executive branch of government in a matter so fundamental as tax exemption.

Favoritism and perceived favoritism will result where powerful, organized churches or ecclesiastical bureaucracies, plead for and

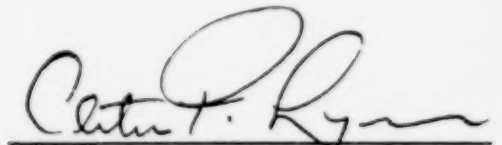
obtain tax rulings through administrative processes without means of judicial review at the instance of religious dissenters and non-religious voters.

The executive branch, reliant upon not giving offense to ecclesiastical pressure groups in order to be re-elected, may yield to demands for special treatment or overlook non-compliance with the prohibition on electioneering contained in Section 501, particularly where such electioneering may be in favor of the office holder.

Equity in the market-place of ideas can be achieved only if those with an interest in promoting equity are accorded a forum and standing in it.

CONCLUSION

WHEREFORE, if the court reaches question 2, the court should affirm the court of appeals on the ground that plaintiffs have standing.



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